

NORTH DAKOTA CENTURY CODE

CHAPTER 61-03 STATE ENGINEER

61-03-21. State engineer may require plan of operation - Adequate structure. Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet [1233481.84 cubic meters] shall annually, between the first and fifteenth day of February, file with the state engineer an operating plan for such reservoir for the calendar year in which the same is filed. The operator of any such reservoir shall be required to cooperate with the state engineer to the end that all water releases shall be compatible with the best interest of the greatest number of downstream water users and affected landowners. In the event that the state engineer declares an emergency to exist in connection with the operation of any such reservoir, the operator thereof shall promptly submit to the state engineer a separate interim operating plan therefor in addition to the annual reservoir operating plan herein required. Such interim operating plan shall then be coordinated and integrated with the suggestions and plans of the state engineer to best serve the affected interests during such emergency. The state engineer may also require such operators to maintain adequate structures and to operate them in a manner that will prevent waste, promote the beneficial use of water and not endanger the general health and welfare of persons affected thereby. In the event such operator fails to maintain and operate adequate structures in the manner provided in this section, the state engineer shall set a place and time for hearing and shall serve notice upon such operator to show cause at such time and place why his water permit should not be declared terminated and canceled. A copy of any order terminating or canceling such water right shall be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

History: Enacted 1957; amended 1963, 2001.

61-03-21.1. Inspection by state engineer. Whenever the state engineer is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the state engineer shall have the authority to enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer, the state engineer shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer may request the district court of the district containing the property for an order authorizing the state engineer to enter the property to inspect or investigate the alleged violation.

History: Enacted 1985; amended 1991.

61-03-21.2. Removal or modification of unsafe or unauthorized works. If the state engineer pursuant to the state engineer's authority under this title determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last known post-office address of record. A copy of the notice must also be sent to any tenant, if the state engineer has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal or modification of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well founded and are not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

History: Enacted 1985; amended 1989, 1991.

CHAPTER 61-04 APPROPRIATION OF WATER

61-04-11. Inspections of works. If the state engineer, in the course of the state engineer's duties, shall find that any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the state engineer at once shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works. If such fees are not paid by the owner of such works within thirty days after the decision of the state engineer, they shall be a lien against any property of such owner, and shall be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in the state engineer's opinion it is necessary, may inspect any works under construction for the storage, diversion, or carriage of water, and may require any changes necessary to secure their safety. The fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any agency thereof shall be required to pay such fees.

History: Enacted 1905; amended 1961.

CHAPTER 61-16.1 OPERATION OF WATER RESOURCE DISTRICTS

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the

contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

History: Enacted 1981; amended 1985, 1997, 2003.

NORTH DAKOTA ADMINISTRATIVE CODE

ARTICLE 89-08 DAMS, DIKES, AND OTHER DEVICES

CHAPTER 89-08-01 DEFINITIONS

89-08-01-01. Definitions. The following definitions apply in this article:

1. "Appurtenant works" means all works incident or attached to a dam, dike or other device, including but not limited to:
 - a. A spillway, either in the dam or separate from it;
 - b. The reservoir and its rim;
 - c. A low-level outlet; and
 - d. A water conduit such as a tunnel, pipeline, or penstock, either through the dam, dike or other device or their abutments.
2. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.
3. "Dam" means any artificial barrier or obstruction, including any appurtenant works, across a stream channel, watercourse, or an area that drains naturally or may impound water.
4. "Dike" means an embankment, including appurtenant works, constructed to protect real or personal property.
5. "District" means a water resource district.
6. "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.
7. "Height" means the vertical distance in feet from the stream channel bottom at the centerline of the dam to the top of the settled embankment.
8. "High-hazard dam" means any dam located upstream of developed or urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is potential for the loss of more than a few lives if the dam fails.

9. "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.
10. "Low-hazard dam" means a dam located in rural or agricultural areas where there is little possibility of future development. Failure of low-hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails.
11. "Medium-hazard dam" means a dam located in predominately rural or agricultural area where failure may damage isolated homes, main highways, or railroads, or cause interruption of minor public utilities. The potential for the loss of a few lives may be expected if the dam fails.
12. "Other device" means a water control structure, other than a dam or dike, which may include, but is not limited to, diversion ditches, dugouts, lagoons, and holding ponds.
13. "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device, except that for the purpose of signing the application for construction permit, "owner" means the person who owns the property or interest in property upon which the dam, dike, or other device will be built.
14. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-01-02. Definition of unsafe dam, dike, or other device. A dam, dike, or other device is unsafe if it threatens harm to life or property, or is improperly maintained.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21.2

CHAPTER 89-08-02 CONSTRUCTION PERMITS

89-08-02-01. Determining the capacity of dams, dikes, or other devices. The impounding capacity of a dam is calculated based upon the top of the settled embankment of the dam. The diverting capacity of a dike is calculated based upon the area protected as measured from the top of the dike. If the absence of the dike could result in more than fifty acre-feet of water inundating the protected area, a permit is required. The diverting capacity of a diversion ditch is calculated based upon the runoff from a twenty-five year, twenty-four hour, precipitation event. No construction on the dam, dike, or other device can begin until a construction permit is obtained.

History: Effective November 1, 1989; amended effective April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02. Contents of application. A completed application for a construction permit must be submitted to the state engineer along with plans and specifications; evidence recognized in a court of law sufficient to establish a prima facie case of a property right in the property that will be affected by the construction of the dam, dike, or other device; and any additional data or information required by the state engineer.

History: Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03. Permit does not absolve liability for damages. The receipt of a permit, including a permit for emergency construction, does not relieve an applicant from liability for damages resulting from any activity conducted pursuant to the permit.

History: Effective June 1, 1998.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-04. Temporary construction permits. If the state engineer determines an emergency exists, the state engineer may issue a temporary permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet. A temporary permit shall have a duration of not more than six months unless extended by the state engineer.

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-03 INSPECTIONS

89-08-03-01. Inspections and reports during construction of high-hazard dams, medium-hazard dams, and low-hazard dams over ten feet [3.05 meters] in height. In order to protect property and assure safety, the following are conditions to all permits for high-hazard dams, medium-hazard dams, or low-hazard dams over ten feet [3.05 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. Within seven days after each inspection, the engineer in charge shall submit a written report to the state engineer specifying the information obtained pursuant to the inspection. The report will specify any changes necessary under this section.

History: Effective November 1, 1989; amended effective April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-03-02. Monitoring during construction by the state engineer. The state engineer may monitor any dam, dike, or other device during construction to ensure conformity with the construction permit and the plans and specifications.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11

89-08-03-03. Changes in construction. If, pursuant to an inspection under section 89-08-03-01 or section 89-08-03-02, the state engineer or engineer in charge determines changes in construction are necessary to insure safety, whether the changes are necessary because the dam, dike, or other device does not comply with the construction permit or plans and specifications, or an unforeseen condition is discovered, or for any other reason, the state engineer may order the appropriate changes and may order construction be stopped until the changes are made.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11

89-08-03-04. Requested inspections.

1. Upon receipt of an affidavit complaining a dam, dike or other device is unsafe because of its construction, maintenance, or operation, the state engineer shall examine the available information and determine if the complaint is justified.
2. If the state engineer determines the complaint is unjustified, the state engineer shall notify the complainant in writing of that fact. If the complainant continues to request an inspection even though the state engineer determines the complaint is unjustified, the state engineer shall make the inspection upon receiving from the complainant a certified check or cashier's check in an amount sufficient to cover the total cost of inspection.
3. If the state engineer determines the complaint is justified, the state engineer shall make the inspection upon receiving from the complainant a certified check or cashier's check in an amount sufficient to cover the total cost of inspection.
4. If the dam, dike, or other device is defective, the state engineer shall require the owner of the dam, dike, or other device to pay the cost of inspection, and upon payment shall return the amount deposited by the complainant. If the cost of inspection is not paid within thirty days by the owner of the defective dam, dike, or other device, the cost of inspection shall become a lien against any of the owner's property.
5. If the dam, dike, or other device is not found defective, any money deposited by the complainant for the inspection may not be returned.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11, 61-03-21.1, 61-03-21.2

89-08-03-05. Periodic inspections after construction. As a condition on all construction permits, the state engineer may require inspection of a dam, dike, or other device as often as necessary after construction to protect property and assure safety.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-04-11, 61-16.1-38

89-08-03-06. As built plans. As a condition on all construction permits, the owner of the dam, dike, or other device will provide the state engineer with "as built" plans after the dam, dike, or other device has been constructed.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-04 OPERATING PLAN

89-08-04-01. Operating plan. By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre-feet shall submit an operation plan for that year to the state engineer. The state engineer shall review the operating plan and if deficiencies or discrepancies exist, the state engineer shall notify the owner of the dam of the deficiencies or discrepancies within thirty days of discovering the deficiencies or discrepancies. The owner of the dam shall correct the deficiencies or discrepancies and return the corrected operating plan to the state engineer within fourteen days of receiving notice of the deficiencies or discrepancies. The operation plan must be approved by the state engineer prior to the operation of the dam. If the operator receives no response from the state engineer, the operation plan is approved. The operation plan must contain at a minimum:

1. A reservoir operation procedure;
2. A maintenance procedure for the dam and appurtenant works; and
3. Emergency procedures and warning plans.

History: Effective November 1, 1989.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-21